in their character. Such discretion, whether rightfully or wrongfully exercised, is not subject to interference by the judiciary, *McChord* v. *Louisville & Nashville R. Co.,* 183 U. S. 496, 46 L. Ed. 289. Some expressions employed in the cases cited would indicate that the rule has its limitations. The quotation from HIGH ON INJUNCTIONS speaks of acts "purely legislative, such as the passage of resolutions or the adoption of ordinances." In *Waterworks* v. *New Orleans,* supra, the discretion is not to be reviewed as to acts which are "legislative in their character." In *People* v. *Sturtevant,* 9 N. Y. 263, the mayor and council of the city of New York were held properly enjoined by the superior court from passing an ordinance granting a franchise to a street railway, it being held to be a grant upon condition and not legislative action. The lower court had issued the restraining order (this was in 1852) on the ground that such a use of the streets would constitute a nuisance, which it had power to prevent the council from creating. Want of power and where the mere passage of an ordinance would work irreparable injury have been held to authorize a restraining order. *Spring Valley Waterworks* v. *Bartlett,* 16 Fed. 615; or where the proposed act is ultra vires. *Murphy* v. *East Portland,* 42 Fed. 308. Where a city by authorized taxation had purchased property for a particular purpose, it was enjoined from passing an ordinance authorizing the mayor to convey it. *Roberts* v. *City of Louisville,* 92 Ky. 95, 17 S. W. 216. In *Negus* v. *City of Brooklyn,* 62 How. Prac. 291, a city council was restrained from passing an ordinance over the mayor's veto, their consent alone being insufficient, unconstitutional, a gross perversion of discretion and tending to create a public nuisance. A city council may be enjoined from any unlawful act, but not from an act within its legal discretion. *City of Detroit* v. *Hosmer,* 79 Mich. 384. Where a city threatened to cut off the supply of water to plaintiff's mill in breach of an alleged contract, such threatened action was enjoined, on the ground that when a municipal corporation engages in things not public in their nature, it no longer legislates, but contracts, and is as much bound by its engagements as is a natural person. *Penn. Iron Co.* v. *City of Lancaster,* 25 Penn. Super. 478. It has also been held that equity has jurisdiction of a bill quia timet by a taxpayer to restrain the passage of an ordinance, and as to property owned by the city, the council and city officers generally are considered as trustees, subject to control by courts of equity. The cases cited are sufficient to indicate that while the rule, first announced, is generally accepted, the courts are not agreed as to what is an exercise of legislative discretion. Federal courts are much less prone to issue such restraining orders than are state courts, and no occasion seems to have arisen where the supreme court deemed such an injunction a proper exercise of judicial power.

CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES.—Plaintiff's husband, a citizen and resident of Pennsylvania, was killed by the negligence of the defendant railroad company while operating one of defendant's locomotives in Pennsylvania. Plaintiff, *a citizen of Pennsylvania,* capable of bringing suit as the personal representative of the deceased by the laws of Pennsylvania, brought action in the state court of Ohio on the theory that the Ohio statute

allowing survival of personal actions to the representatives "Whenever the death of a *citizen of this state*" is caused by negligent killing without the state, was void, and that, therefore, the law of the place of the delict should control. *Held* (HARLAN, WHITE and MCKENNA, JJ., dissenting), that the statute did not controvene the "privileges and immunities" clause of the Federal Constitution, and that plaintiff could not recover. *Elizabeth M. Chambers* v. *Baltimore & Ohio Railroad Company* (1907), 28 Sup. Ct. Rep. 34.

The operation of the Ohio statute is sharply stated in the state court opinion upholding its validity, from which this appeal was taken: "No action can be maintained in the courts of this state upon a cause of action for wrongful death occurring in another state, except where the person wrongfully killed was a *citizen of the state of Ohio.*" (73 Ohio St. 16.) And it was also early settled that it was one of the immunities from which a citizen could not be barred, "to institute and maintain actions of any kind in the courts of the state" on an equality with the citizens of that state. (*Corfield* v. *Coryell,* 4 Wash. CC. 371; *Ward* v. *Maryland,* 12 Wall. 418; *Slaughter House Cases,* 16 Wall. 36; *Cole* v. *Cunningham,* 133 U. S. 107.) The dissenting opinion proceeds on the theory that a statute allowing the personal representatives to sue in the case of negligent killing confers a right upon the deceased to which his representatives, *as his representatives,* and in his right, at his death, succeed. "While in life Chambers [the deceased] enjoyed the right—and it was a most valuable right—of such protection as came from the rule established in Pennsylvania, that, in case of his death in consequence of the negligence of others, the wrong done to the deceased in his lifetime could be remedied by means of suit brought in the name and for the benefit of his widow or personal representative," a rule sustained in construing a somewhat unusual statute in *Higgins* v. *Central N. E., etc., R. R.,* 155 Mass. 176. The statute in the principal case denies a cause of action unless the deceased is a citizen of Ohio. If then the cause of action is given to him and merely descends to his representatives, then causes of action of citizens of Ohio are allowed in Ohio courts because of citizenship and are denied to aliens because of non-citizenship in Ohio. The majority opinion, however, holds that a statute allowing survivals of personal actions to representatives in case of negligent killing confers no new right on the deceased, but creates an entirely new cause of action vesting in the personal representative after the death of the deceased. Such is surely the construction placed by the Pennsylvania courts on the Pennsylvania statute in question (*McCafferty* v. *Pennsylvania Co.,* 193 Pa. St. 339), a construction strengthened by the general rule that it is injury done to those dependent on the labor of the deceased that sets the measure of damages. If the survival statutes give a cause of action to the personal representative, as a new cause of action, in his own right, then it is the citizenship of the personal representative and not that of the deceased that is important. But under the Ohio statute the personal representative may or may not be a citizen of Ohio; the courts of that state are equally closed to him unless the deceased is a citizen of that state. The personal representative is therefore denied no rights because of his (the personal representative's) citizenship, and the Ohio statute is constitutional.